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quired from the company, and that any neglect to give warnings of the train's approach proper under the peculiar circumstances rendered it liable, etc., was not open to the objection that there was nothing to show that the place of the accident required special precaution.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 351.\* 7 Va.-W. Va. Enc. Dig. 722.]

**2. Railroads (§ 351\*)—Accidents at Crossings—Evidence—Instructions.**—An instruction in an action for the death of a pedestrian struck by an engine at a street crossing, which gives the conditions, showing the unusual surroundings and dangerous conditions of the crossing, and which states that the railroad company was bound to use such precautions as were proper under the surroundings to give warning of the approach of its trains, etc., is not open to the objection as leaving the jury to impose fanciful requirements on the company in protecting pedestrians.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 351.\* 7 Va.-W. Va. Enc. Dig. 716; 726.]

**3. Railroads (§ 351\*)—Accidents at Crossings—Evidence—Instructions.**—An instruction, in an action for the death of a pedestrian struck by an engine at a street crossing, which gives the conditions, showing the unusual surroundings and dangerous conditions of the crossing as proven by plaintiff, and which states that the company was bound to use such precautions as were proper under the circumstances to give warning of the approach of its trains, and that, if such conditions existed, then, unless the company used proper precautions, decedent was not guilty of contributory negligence, is not objectionable as singling out and emphasizing one charge of negligence.

[Ed. Note.—For other cases, see Railroads, Dec. Dig. § 351.\* 7 Va.-W. Va. Enc. Dig. 723.]

**4. Death (§ 99\*)—Action for Negligent Death—Damages.**—In an action for the death of a married woman 31 years old, struck by an engine at a street crossing, mutilating her body, a verdict for \$10,000 will not be set aside as excessive.

[Ed. Note.—For other cases, see Death, Cent. Dig. §§ 125, 129, 130; Dec. Dig. § 99.\* 4 Va.-W. Va. Enc. Dig. 264.]

Judgment affirmed. All the judges concur.

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#### BOWE v. CITY OF RICHMOND.

March 11, 1909.

[64 S. E. 51.]

**1. Taxation (§ 679\*)—Sale to State and Resale—Taxes for Which Land May Be Sold—City and State Taxes.**—Code 1887, § 666, as

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

amended by Act Feb. 11, 1898 (Acts 1897-98. p. 343, c. 306; Code 1904, p. 326), authorizes the sale of land sold and bid in by the commonwealth for the amount for which the sale to the commonwealth was made, but other provisions of the section make the purchase dependent upon the payment of all taxes, penalties, fees, and costs. Code 1887, § 636 (Code 1904, p. 311), makes the taxes due the city as well as those due the state a lien on the property. Code 1887, §§ 638, 639 (Code 1904, p. 313), provide for the sale of the property for a sum sufficient to pay the unpaid state and city taxes thereon, with interest, costs, and charges connected therewith. By Code 1887, § 662 (Code 1904, p. 324), when any real estate is offered for sale as provided by section 638, and no one bids the amount chargeable thereon, the treasurer shall purchase it in the name of the auditor of public accounts for the benefit of the state, city, or town respectively, unless it has been previously purchased in the name of the auditor, when it shall be sold for what it will bring. A lot was sold by the city of Richmond under authority of its charter for non-payment of city taxes for certain years, and at each sale was bid in by the city, but no proceedings were taken to invest it with title, and in 1897 the lot was sold for non-payment of delinquent state taxes and purchased by the state in the name of the auditor of public accounts, and was thereafter sold to defendant pursuant to his application to purchase it, filed under section 666; he paying only the taxes due the state and not those due the city. Held, that though the provisions of the city charter under which it sold the lot and bid it off for non-payment of city taxes, and those of chapter 28, were conflicting, when considered together so far as possible, they authorized the sale of property only upon payment of taxes due the city, as well as those due the state.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1361, 1362; Dec. Dig. § 679.\* 13 Va.-W. Va. Enc. Dig. 153.]

**2. Statutes (§ 224\*)—Construction—Related Statutes—Construing Together.**—Cognate statutes should be construed together and made to harmonize so far as possible.

[Ed. Note.—For other cases, see Statutes, Cent. Dig. §§ 300, 302; Dec. Dig. § 224.\* 12 Va.-W. Va. Enc. Dig. 761.]

**3. Taxation (§ 805\*)—Sale—Actions to Try Title—Actions against Claimant—Defects in Sale.**—Under Code 1887, § 661 (Code 1904, p. 321), providing that a suit to set aside the deed of a purchaser under Code 1887, § 666 (Code 1904, p. 326), which relates to the sale by the state of property sold for non-payment of delinquent taxes, shall not be brought, except for fraud, unless brought within two years after the deed was recorded, a purchaser must comply with all the provisions of section 666 in order to plead the statute as a bar, so that one purchasing without paying city taxes due as well as state taxes, as

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

required by that section, could not plead the statute as a bar to an action by the city to subject the property to payment of city taxes.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. §§ 1593-1595; Dec. Dig. § 805.\* 13 Va.-W. Va. Enc. Dig. 154.]

**4. Taxation (§ 761\*)—Tax Deeds—Validity—Time of Sale.**—Under Code 1887, § 666, as amended by Act Feb. 11. 1898 (Acts 1897-98, p. 343, c. 306; Code 1904, p. 326), providing that if no person who has the right to redeem land sold to the state for delinquent taxes at the time notice of the application to purchase is served shall appear within four months after such notice and redeem, the applicant may purchase within five days after the expiration of four months by paying all taxes, etc., a deed which showed that four months had not elapsed since service of notice of the application to purchase, when the deed was executed by the clerk of the hustings court of the city of Richmond, was void on its face, in absence of long acquiescence and possession, and hence was open to collateral attack in a suit by the city to subject the property to payment of taxes due it, which were not paid by the purchaser on the sale.

[Ed. Note.—For other cases, see Taxation, Cent. Dig. § 1511; Dec. Dig. § 761.\* 13 Va.-W. Va. Enc. Dig. 149; 154.]

Judgment affirmed. All the judges concur.

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OLIVER REFINING CO. *v.* PORTSMOUTH COTTON OIL REFINING CORPORATION.

PORTSMOUTH COTTON OIL REFINING CORPORATION *v.* OLIVER REFINING CO.

March 24, 1909.

[64 S. E. 56.]

**1. Pleading (§ 216\*)—Demurrer—Scope of Inquiry.**—In an action on a written agreement, where one count is the common count in assumpsit and the other counts are based on the agreement in writing, the question whether the agreement upon which the other counts were based could be introduced to sustain a recovery upon the common counts could not be determined upon a demurrer to those counts, but could only be determined on the trial when the evidence was offered.

[Ed. Note.—For other cases, see Pleading, Dec. Dig. § 216.\* 5 Va.-W. Va. Enc. Dig. 299, et seq.]

**2. Pleading (§ 204\*)—General Demurrer.**—Where a count contains several breaches, any one of which is well assigned, a general demurrer to the count should be overruled.

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\*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.